

# MEMORANDUM OF AGREEMENT TRUCKEE RIVER WATER MANAGEMENT

## 1. PURPOSE

The purpose of this Memorandum of Agreement (Agreement) is to delineate the roles and responsibilities of the Fish and Wildlife Service (Service), Pyramid Lake Paiute Tribe (Tribe), Bureau of Reclamation (Reclamation), and Bureau of Indian Affairs (Indian Affairs) [collectively referenced as parties] in the management of Truckee River water designated (Designated Waters) to protect and conserve cui-ui and Lahontan cutthroat trout of Pyramid Lake, which are protected species under the Endangered Species Act of 1973 and subsequent amendments (16USC 1531 et. Seq.) (Act).

It is the intent of the Parties to this Agreement, that the Tribe, in collaboration with the other Parties and in the framework of an Interagency Team, manage the Designated Waters in accordance with an Annual Water Management Plan, which is consistent with the terms of an approved Conservation and Management Plan that provides for the protection and conservation of the protected species under the Act. It is also the intent of this Agreement and Parties, that all laws, regulations, and orders, are complied with to the fullest extent, including but not limited to, consultation procedures under section 7 of the Act.

## II. AUTHORITY

This Agreement is made and entered into by and between the Service, the Tribe, Reclamation, and Indian Affairs under the authority of the Act, its implementing regulations, Title II of Public Law 101-618, and Secretarial Order 3206.

## III. Federal RESPONSIBILITIES

A. The Service, Reclamation and Indian Affairs, as bureaus of the Department of the Interior, shall coordinate with tribes in order to fulfill trust responsibilities and encourage meaningful tribal participation in programs administered under the Act, and shall carry out their responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and the statutory missions of the Department (Secretarial Order 3206).

B. The primary authority and responsibility for administering the Act has been delegated by the Secretary of the Interior to the Service. In order to protect and conserve protected species under the Act, the Service is currently managing the Designated Waters. The Service, as a federal agency, is directed by Congress to seek to conserve protected species under the Act and to utilize its authorities in furtherance of the purposes of the Act. The Service has the responsibility for conducting section 7 consultation with federal agencies or their applicants on actions that may affect species

or critical habitat protected by the Act. The Service has a fiduciary obligation to protect and preserve trust resources for the benefit of the Tribe, including Pyramid Lake fishes, and an obligation to promote self-determination of the Tribe in exercising its sovereign powers and rights.

C. Reclamation has the authority and responsibility for managing the principal water storage facilities on the Truckee River system, including implementing scheduled releases, implementing dam safety and flood control requirements, administration of water storage contracts, forecasting inflows and releases, and development of operation plans. Reclamation, as a federal agency, is directed by Congress to seek to conserve protected species under the Act and to utilize its authorities in furtherance of the purposes of the Act. Reclamation has a fiduciary obligation to protect and preserve trust resources for the benefit of tribes, and an obligation to promote self-determination of tribes in exercising its sovereign powers and rights.

D. Indian Affairs has a fiduciary obligation to protect and preserve trust resources for the benefit of tribes, and an obligation to promote self-determination of tribes in exercising their sovereign powers and rights. As a federal agency, Indian Affairs is directed by Congress to seek to conserve protected species under the Act and to utilize its authorities in furtherance of the purposes of the Act.

#### **IV. INTERDISCIPLINARY TEAM**

A. An Interdisciplinary Team (Team) shall be formed and composed of technical representatives from each party to this Agreement that have sufficient knowledge and expertise to provide assistance and guidance for the management of the waters of the Truckee River and formulation of the annual Water Management Plan. The Water Management Plan will delineate objectives to use available water in accordance with the Conservation and Management Plan, the Pyramid Lake Fishery Conservation Plan and applicable recovery plans. This Team will be established upon signature by all parties to this Agreement. Team Lead will remain with the Service until the Tribe completes a Conservation and Management Plan and section 7 consultation is completed on the plan.

B. The Team will meet monthly to discuss current Natural Resource Conservation Service (NRCS) snowpack forecasts, and Reclamation's runoff and reservoir storage projections, as well as forecasts of Truckee River water conditions provided by other agencies. These meetings will be scheduled by the Team Lead. Reclamation will provide for runoff forecasts through the calendar year. Since snowpack levels and forecasts change frequently, these data will be requested, analyzed and reviewed at least monthly by the Team through mid-April. This collaborative analysis will be used to update and refine the runoff and reservoir storage projections and to develop the Water Management Plan for the current water year.

C. The Interdisciplinary Team will have a Team Lead who shall:

1. Work collaboratively with the other Parties to develop an annual Water Management Plan for the Truckee River, incorporating all information that will affect flow regimes and storage opportunities, including current snowpack conditions, runoff projections, reservoir levels and potential for water exchanges.
2. Make a formal request to implement the annual Water Management Plan through Reclamation and the Federal Water Master.
3. Be responsible for daily water management decisions.
4. Work directly with the Federal Water Master to make adjustments to the flow regime to accomplish the objectives in the annual Water Management Plan.
5. Communicate with the Team regularly on implementation of the annual Water Management Plan.
6. Ensure that the Water Management Plan and its implementation does not interfere with the effective operation or integrity of Marble Bluff Fish Facility.
7. Ensure that substantial deviations from the annual Water Management Plan will be developed collaboratively and reviewed by the Team.
8. Ensure that the annual Water Management Plan is drafted to satisfy the goals and objectives of applicable recovery plans, the Conservation and Management Plan, and the Pyramid Lake Fishery Conservation Plan.
9. Coordinates the implementation of the Water Management Plan with the scheduling parties under Article 11 of TROA; fishery resource managers with Nevada Division of Wildlife; and other affected or interested public.
10. Update the Water Management Plan regularly and as often as necessary in coordination with the Team to reflect changes in cui-ui and Lahontan cutthroat trout responses to habitat conditions, runoff forecasts, actual runoff, or other circumstances.
11. Coordinate with the Tahoe/Truckee River Restoration Team to ensure that water management strategies developed by the two teams are consistent and meet restoration goals.
12. Participate in the Truckee River Operations Forum to represent the Interdisciplinary Team and to discuss the runoff and reservoir projections with other interested or affected agencies and entities.

## **V. PREPARATION OF MANAGEMENT PLANS**

Two documents, a Conservation and Management Plan and an Annual Water Management Plan, will form the basis of this Agreement.

A. A Conservation and Management Plan is a strategic document that will be developed to protect and conserve Pyramid Lake fishes. This Plan shall be consistent with the Pyramid Lake Fishery Conservation Plan, applicable recovery plans, and the Biological Opinion issued as a result of consultation on the Plan, and shall address the long-range approach for management of the Designated Waters, including:

1. Meeting the needs of the species protected under the Act, is consistent with the goals identified in the Pyramid Lake Fishery Conservation Plan and outline's methods and procedures that will recover the species to the point that protection under the Act is no longer required.
2. Using appropriate hydrologic modeling to develop flow regimes that will recover and maintain both cui-ui and Lahontan cutthroat trout;
3. The storage, exchange, and release of Designated Waters consistent with applicable reservoir management regulations (e.g., TROA, and flood control criteria);
4. The storage and release of Water Quality Credit Water in accordance with the Truckee River Water Quality Settlement Agreement.
5. The storage and release of the Designated Waters in accordance with the goals identified in the Pyramid Lake Fishery Conservation Plan and in accordance applicable recovery plans.
6. The storage and release of water for recruitment and maintenance of the cottonwood/willow riparian forest during above normal water years.

B. The Annual Water Management Plan will be developed for each water year and updated as necessary, to detail the use of the Designated Waters for the benefit of Pyramid Lake fishes consistent with the Conservation and Management Plan.

## **VI. PARTY COMMITMENTS**

A. The Tribe shall:

1. Develop, in collaboration with the Parties to this Agreement, a Conservation and Management Plan that meets the needs of Pyramid Lake fishes, is consistent with the goals identified in the Pyramid Lake Fishery Conservation Plan and outlines methods and procedures that will recover the species to the point that protection under the Act is no longer required, and addresses the following:

- a. Use of appropriate hydrologic modeling to develop flow regimes that will recover and maintain the listed species under the Act.
- b. Storage, exchange, and release of Designated Waters for the benefit of the listed species under the Act, in accordance with applicable recovery plans, the Pyramid Lake Fishery Conservation Plan, and pursuant to applicable reservoir management regulations.

2. Modify or amend the Conservation and Management Plan as required to incorporate the best available science, to enhance the implementation of a Tahoe/Truckee River Restoration Recovery Plan, to ensure consistency with the Pyramid Lake Fishery Conservation Plan, and comply with the Biological Opinion issued as a result of consultation on the Plan.

3. Assume the role of Team Lead, upon completion of a Conservation and Management Plan and the Intra-Service section 7 on the Conservation and Management Plan.

B. The Service shall:

1. Provide technical assistance to the Tribe in the development of Annual Water Management Plans.
2. Collaborate with the Tribe as necessary in development of the Conservation and Management Plan and provide expert and peer review of the Conservation and Management Plan.
3. Complete Intra-Service consultation on the Conservation and Management Plan.
4. Retain delegated administrative authority to protect and conserve protected species under the Act.
5. Assist the Tribe in assuming the role of Team Lead.

C. Reclamation shall:

1. Provide technical assistance to the Tribe in the development of annual Water Management Plans.
2. Manage the principal water storage facilities on the Truckee River system, including implementing scheduled releases, implementing dam safety and flood control requirements, administration of water storage contracts, forecasting inflows and releases, and development of operation plans.
3. Assist the Tribe in assuming the role of Team Lead.

D. Indian Affairs shall:

1. Provide technical assistance to the Tribe in the development of annual Water Management Plans.
2. Assist the Tribe in assuming the role of Team Lead.

## VII. SECTION 7 CONSULTATION

The Act requires every federal agency to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Formal consultation is required for any federal action which may affect listed species or critical habitat.

The transfer of Team Lead for water management role from the Service to the Tribe is a discretionary federal action which may affect listed species and requires section 7 consultation. The transfer of management responsibilities can occur only upon conclusion of intra-Service consultation and approval of a Conservation and Management Plan that is consistent with the Pyramid Lake Fishery Conservation Plan and provides for conservation and recovery of protected species under the Act.

A. To the extent the following concerns are not addressed in the Conservation and Management Plan, reasonable and prudent measures will be developed within the Intra-Service Biological Opinion to the extent that they minimize the impacts of anticipated incidental "take". These concerns include:

1. Hydrologic modeling that evaluates the opportunities for the use of Designated Waters in the development of flow regimes that will recover and maintain both species;
2. Storage and release of Designated Waters established under TROA only for the benefit of cui-ui and Lahontan cutthroat trout.
3. Storage and release of Water Quality Credit Water in accordance with the Truckee River Water Quality Settlement Agreement.

4. Storage and release of Designated Waters in accordance with the goals identified in the Pyramid Lake Fishery Conservation Plan and in accordance with applicable recovery plans.
5. Storage and release of water for recruitment and maintenance of the cottonwood/willow riparian forest during above normal water years.
6. Coordination of fishery management and flow management activities with State and Federal management agencies and the public.

B. If the Tribe proposes an action that the Service believes is inconsistent with the Biological Opinion, the issue will be raised to the Project Officers (listed below) for discussion and resolution, or informal consultation.

If during informal consultation, the Service determines that an unresolved issue(s) is not likely to adversely affect listed species, the consultation process will be terminated via a letter to the Tribe and no further action will be necessary.

If during informal consultation, the Service determines that any one of the four circumstances listed in VII. C. below occur, reinitiation of formal consultation will be required.

C. Reinitiation of formal consultation is required under the following circumstances:

1. If the amount or extent of "take" authorized in the Biological Opinion is exceeded.
2. If new information reveals effects of the action that may affect listed species in a manner or to an extent not previously considered.
3. If the identified action is subsequently modified in a manner that causes an effect to the listed species that was not considered in the Biological Opinion.
4. If a new species is listed that may be affected by the identified action.

D. If through reinitiation of the consultation process described in paragraph VII. C, the Service determines that the Tribe's proposed action is likely to jeopardize the continued existence of either species, the Service will identify reasonable and prudent alternatives to avoid jeopardy. If the Tribe fails to accept the new reasonable and prudent alternative of the Biological Opinion, Team Lead will revert to the Service.

If the Tribe takes an action without first coordinating with the Service and that action results in a level of take not authorized in the Biological Opinion or jeopardizes the continued existence of either species, Team Lead will revert back to the Service.

#### **VIII. PROJECT OFFICERS:**

- A. Service: Nevada Field Supervisor  
1340 Financial Blvd., Suite 234  
Reno, Nevada 89502  
Tel: (775) 861-6300
  
- B. Tribe: Tribal Chairman  
Post Office Box 256  
Nixon, Nevada 89424  
Tel: (775) 574-1000
  
- C. Reclamation: Area Manager  
Post Office Box 640  
Carson City, Nevada 89702  
Tel: (775) 882-3436
  
- D. Indian Affairs: Superintendent  
Western Nevada Agency  
1677 Hot Springs Road  
Carson City, Nevada 89706  
Tel: (775) 887-3500

#### **IX. MODIFICATIONS**

Modifications to this agreement may be proposed by any party and shall be effective when agreed upon in writing by all parties to this agreement.

#### **X. TERMINATION**

The Service and the Tribe may mutually agree to terminate this agreement at any time with 30 days written notice to the Parties.

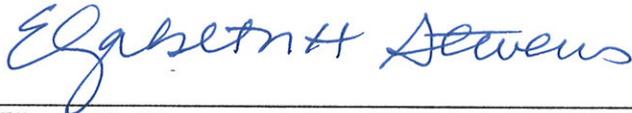
#### **XI. SCOPE AND LIMITATIONS**

This Agreement shall not be construed to grant, expand, create or diminish any legally enforceable rights, benefits, or trust responsibilities otherwise found under existing law. This Agreement does not modify existing statutory authority or the authority of the Tribe. Nothing in this Agreement authorizes the take of listed species under the Endangered

Species Act. This Agreement is subject to the requirements of the Anti-Deficiency Act.

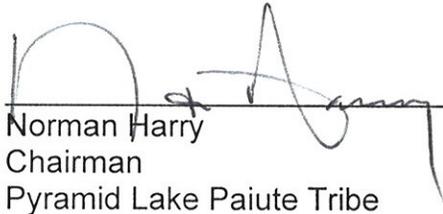
Nothing in this agreement shall be construed as an acknowledgment or admission by the Tribe that it would lack management authority over the waters covered by this Agreement in the absence of this Agreement.

Signed this day, Monday, November, 29, 1999



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Elizabeth Stevens  
Deputy Manager, California/Nevada office  
U.S. Fish and Wildlife Service  
U.S. Department of the Interior



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Norman Harry  
Chairman  
Pyramid Lake Paiute Tribe



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Elizabeth Ann Rieke  
Area Manager, Lahontan Basin Area Office  
U.S. Bureau of Reclamation  
U.S. Department of the Interior



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Robert Hunter  
Superintendent  
Western Nevada Agencies  
Bureau of Indian Affairs  
U.S. Department of the Interior